

BEFORE THE  
TENNESSEE DEPARTMENT OF EDUCATION

OFFICE OF LEGAL SERVICES

AUG 15 2002

DIVISION OF  
SPECIAL EDUCATION

IN THE MATTER OF:

METRO NASHVILLE PUBLIC SCHOOLS

v.

[REDACTED],

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No. 02-31

MEMORANDUM OPINION AND FINAL ORDER

This matter arose when the Metro Nashville Public Schools requested a Due Process Hearing to determine whether or not [REDACTED], a student in the Metro Nashville Public School System, should be evaluated for a suspected disability that may be interfering with her education.

The Due Process Hearing took place on June 28, 2002. [REDACTED]'s mother, [REDACTED], had notice of the hearing time and place and chose not to appear either in person or through a representative. Three witnesses testified for the School System and 14 exhibits were entered into evidence.

WITNESS CREDIBILITY

1. The Court finds Kaye Rackard, Ph.D., Director of Special Education for the Metro Nashville School System, credible.

2. The Court finds Stacey Duffee, [REDACTED]'s classroom teacher for the 2001-2002 school year, credible.

3. The Court finds Kristin Willocks, a school psychologist with the Metro Nashville School System, credible.

#### FINDINGS OF FACT

1. [REDACTED] was a fourth grader in the Metro Nashville Schools during the 2001-2002 school year.

2. [REDACTED]'s Mother, [REDACTED], had adequate notice of the date and time of the Due Process Hearing. Tr. p. 3 and Collective Exhibit #1 to the Transcript.

3. [REDACTED] did not contact the Court nor did she choose to attend the Due Process Hearing.

4. Kaye Rackard considered it part of her duties to identify children with potential learning disabilities. Tr. p. 8.

5. In November of 2000, the School System notified [REDACTED] that it was concerned about [REDACTED] lack of educational progress. Tr. pp. 9-10.

6. [REDACTED] responded to the Notice of Concern by checking that she did not want a conference with [REDACTED]'s teachers regarding their concerns. Tr. p. 11.

7. On February 26, 2001, the School System sent Ms. [REDACTED] another Notice of Concern. Tr. p. 11-12.

8. Ms. [REDACTED] responded to the second Notice of Concern by checking that she did not want a conference. Tr. p. 12.

9. [REDACTED] was retained in the first grade for lack of educational progress. Tr. p. 12.

10. [REDACTED] had poor grades in the second and third grade. Tr. pp. 14-15.

11. Attendance was not a contributing factor to [REDACTED]'s poor grades. Tr. p. 16.

12. [REDACTED]'s test scores on standardized achievement tests are very, very low. Tr. pp. 20-22.
13. The School System sent another Notice of Concern on February 25, 2002. Tr. p. 27.
14. The School System convened a Support Team meeting for [REDACTED] on April 18, 2002. Tr. p. 30.
15. At one point [REDACTED] wrote a letter to her teacher asking for help in getting her work done. Tr. p. 33.
16. The Support Team recommended the [REDACTED] receive psychological testing. Tr. p. 40.
17. After the Support Team Meeting, Ms. Rackard met with Ms. [REDACTED] and asked that she consent to psychological testing. Tr. p. 40.
18. Ms. [REDACTED] refused to consent to the testing. Id.
19. Classroom observations found [REDACTED] to be argumentative and disinterested. Tr. p. 42.
20. In Ms. Rackard's professional opinion, [REDACTED] needs psychological testing. Tr. p. 44.
21. The School System has provided tutors and other help to [REDACTED] but it has not had a great enough effect. Tr. p. 46.
22. [REDACTED] is very difficult to motivate. Tr. p. 52-53.
23. [REDACTED]'s classroom teacher, Stacey Duffee, sent homework assignments home with [REDACTED]. Tr. pp. 53-54.
24. Ms. [REDACTED] rarely signed and returned the accompanying paperwork. Tr. p. 54.

## CONCLUSIONS OF LAW

Congress intended for the Individuals with Disabilities Act (IDEA) (20 U.S.C.A.1400*eq.*) to guaranty children with disabilities a free appropriate public education. (FAPE). *Renner v. Board of Education*, 185 F.3d 635, 644 (6<sup>th</sup> Cir. 1999). In determining whether or not a public school system has offered a disabled child a FAPE, a court must first determine whether the school system has complied with the procedures mandated by IDEA. *See, Board of Education v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034, 73, 73 L.Ed.3d 690 (1982). In return for accepting federal monies, the IDEA requires states to identify, locate, and evaluate all disabled children residing in the state who are in need of special education and related services. 20 U.S.C.A. § 1412 (2) (C) .

Public School Systems have an affirmative duty to find and evaluate all children in need of special education and related services. 20 U.S.C.A. . § 1412 (3) (A). Public School Systems also have an affirmative duty to conduct appropriate evaluations. 20 U.S.C.A. § 1414 (1) (A) and (B). If the parents of a child believed to be in need of special education or related services refuse to consent to the appropriate evaluation the agency may avail itself of the due process proceeding to secure permission for the evaluation.

The un-refuted evidence in this case clearly establishes that [REDACTED] is a child with severe difficulties that impact on her ability to perform in school. The School System has availed itself of the due process hearing in an attempt to fulfill its obligation under the law. The Court **FINDS:**

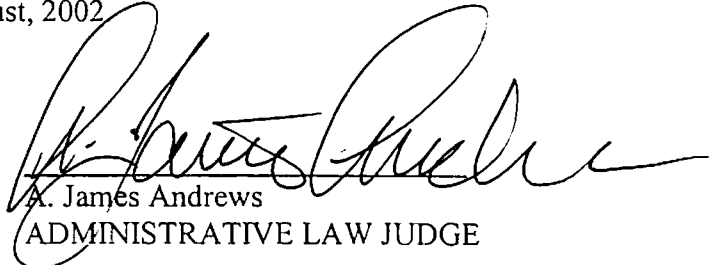
A. That [REDACTED] is a child with potential special education and related service needs as those terms are defined under the IDEA.

B. That the School System needs to evaluate [REDACTED] in order to meet its legal obligations to [REDACTED].

The Court hereby **ORDERS** the Metro Nashville Public School System to take whatever measures it deems necessary to test [REDACTED] in order to identify whether or not she has a disabling condition that would entitle her to special education or related services.

This decision is binding on both parties unless the decision is appealed. Any party aggrieved by this decision may appeal to the Chancery Court for Davidson County, Tennessee, or may seek review by the United States District Court for the District in which the school system is located. Such appeal or review must be sought within sixty days of the entry of a final order in a non-reimbursement case or three years in cases involving educational cost and expenses. In appropriate cases the reviewing court may stay this final order.

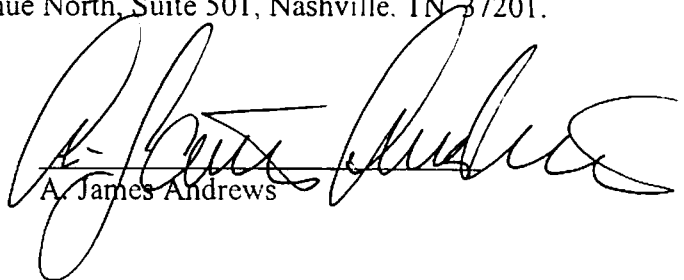
IT IS SO ORDERED THIS 8<sup>th</sup> day of August, 2002

  
A. James Andrews  
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MEMORANDUM OPINION AND FINAL ORDER has been sent by first class mail this 9<sup>th</sup> day of August, 2002 to the following:

1. Ms. [REDACTED], Nashville, TN 37211.
2. Mary E. Johnston, 222 Third Avenue North, Suite 501, Nashville, TN 37201.

  
A. James Andrews